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In the Supreme Court of the United States

October Term, 1943

No. —

Fred M. Vinson, Director of Economic Stabilization, by Prentiss M. Brown, Administrator, Office of Price Administration, petitioner

v.

Washington Gas Light Company, respondent

No. —

Fred M. Vinson, Director of Economic Stabilization, by Prentiss M Brown, Administrator, Office of Price Administration, petitioner

v.

Public Utilities Commission of the District of Columbia, respondent

---

No. —

Prentiss M. Brown, Administrator, Office of Price Administration, petitioner

v.

Washington Gas Light Company, respondent

No. —

Prentiss M. Brown, Administrator, Office of Price Administration, petitioner

v.

Public Utilities Commission of the District of Columbia, respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The Solicitor General on behalf of the Economic Stabilization Director and the Administrator of the Office of Price Administration prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia, entered on July 26, 1943, in the cases of *Washington Gas Light Company* v. *Byrnes, etc., Washington Gas Light Company* v. *Brown, etc., Public Utilities Commission of the District of Columbia* v. *Byrnes, etc., Public Utilities Commission of the District of Columbia* v. *Brown, etc.*, reversing the judgment of the District Court and remanding the cases with instructions to dismiss the appeals from the Commission's orders.

OPINIONS BELOW

The opinions in the Court of Appeals for the District of Columbia are not yet officially reported but may be found at R. II, 428–449. The opinion of the district court (R. I, 15–20) is reported in 48 F. Supp. 703. The opinion of the Public Utilities Commission of the District of Columbia accompanying its Order No. 2401 of October 13, 1942, granting a rate increase, is found at R. I, 39–57; the dissenting opinion is found at R. II, 271–317.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia was entered on July 26, 1943

(R. II, 451). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, and Section 43–705 of the District of Columbia Code (1940), being part of the Act of March 4, 1913, 37 Stat. 979, as amended.

QUESTIONS PRESENTED

1. Whether the Commission failed to accord the Director and the Administrator their right to a full and fair hearing under the Act of October 2, 1942.

2. Whether the Commission was under a duty, by virtue of its statutory responsibility to establish just and reasonable rates, and in view of the wartime economy and the national stabilization program, to refuse to grant a rate increase in the absence of a clear showing that an increase was necessary.

3. Whether the Commission was under such a duty by virtue of the Act of October 2, 1942.

4. Whether the company, which on its own figures was earning a return of 5 per cent on a substantially undepreciated rate base after all Federal income and excess profits taxes, may be held to have made a clear showing that an increase in its rates was necessary.

5. Whether the Commission erred in its treatment of various items of expense, especially (a) the allowance as an operating expense of certain wartime corporate income taxes; and (b) the allowance of depreciation expense on a basis con-

flicting with that approved in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575.

STATUTES AND ORDERS INVOLVED

Section 1 of the Act of October 2, 1942, c. 578, 56 Stat. 765, 50 U. S. C. (App.), Supp. II, Sections 961, 962, 967 (c):

> That in order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on September 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities: *Provided, That no common carrier or other public utility shall make any general increase in its rates or charges which were in effect on September 15, 1942, unless it first gives thirty days' notice to the President, or such agency as he may designate, and consents to the timely intervention by such agency before the Federal, State, or municipal authority having jurisdiction to consider such increase.* [Italics added.]

All other pertinent statutes and orders are set forth in the Appendix, *infra*, pp. 22–29.

STATEMENT

On March 20, 1942, the Public Utilities Commission of the District of Columbia (the "Commission") issued Order No. 2219 directing that "an engineering and accounting investigation be made relative to the rates, tolls, charges, tariffs, rules, regulations and conditions of service of the Washington Gas Light Company, including an investigation in conformity with the sliding-scale arrangement" (R. I, 33). On July 21, 1942, the Commission issued a notice under such order for a formal public hearing "in accordance with the sliding scale arrangement established by Order No. 1458" (R. I, 34, 69–73). Hearings were held before the Commission on several days during August and September. At the first hearing a petition of the Administrator of the Office of Price Administration (the "Administrator") for leave to intervene was filed, and without objection, was granted. (R. I, 34–37.)

During the hearings, counsel for the Administrator repeatedly moved that the basic provisions of the sliding-scale arrangement be reexamined in the light of the price control legislation and, if necessary, that the scope of the proceedings be broadened to permit such inquiry. All such motions were denied, on the ground that the issues were limited to the carrying out of the sliding-

scale formula established in 1935. The Chairman on September 8 stated that questions pertaining to the basic elements of that arrangement were not within the scope of the proceeding (R. I, 121–123).[1]

By oral and written motions (R. II, 345–346) the Administrator sought to reopen the proceeding for the purpose of taking evidence with respect to the necessity of revising the sliding-scale arrangement to take account of present economic conditions, "particularly those provisions which relate to rate of return and the allowance of federal income taxes as an operating revenue deduction." The motions were denied by a two-to-one decision of the Commission (R. II, 409).

Thereafter, the Act of October 2, 1942 (*supra*, p. 4; Appendix, *infra*, p. 23), was approved, providing, *inter alia*, for thirty days' notice of utility rate increases to, and consent to intervention by, the President or his agent. October 3, 1942, the President issued Executive Order No. 9250 estab-

[1] On this ground the Commission sustained the Company's objection to a question relating to the Company's depreciation expense charged for income-tax purposes (Tr. 976) and sustained the Company's objections to questions concerning the propriety of the arrangement's provisions for depreciation R. II. 390–396). These latter questions were directed to the propriety of computing interest at 4 percent on the reserve balance while the rate of return was computed at the higher rate of 6½ percent (see also R. II, 400 *et seq.*).

The Commission indeed refused to permit one of the Commissioners to ask questions pertaining to the rate base (R. I. 96–97).

lishing the Office of Economic Stabilization. 7 Fed. Reg. 7871.

On October 13, 1942, prior to notice to the Economic Stabilization Director (the "Director"), the Commission issued Order No. 2401 approving an increase in gas rates aggregating approximately $200,000, effective September 1, 1942 (R. I, 39–57). One Commissioner dissented (R. II, 271–317).[2] Two days later, the Company served the Director with notice, which did not embody a consent to intervention as required by the Act of October 2, 1942 (R. I, 188–189, 191). The Director, on October 14, 1942, by his Directive No. 1, designated the Administrator as his representative to receive such notice and to intervene and participate in proceedings upon proposals to increase rates or charges. 7 Fed. Reg. 8758.

On October 19, 1942, the Director, by his representative, filed a petition with the Commission praying that Order No. 2401 be vacated, that the proceeding be reopened for the purpose of receiving further evidence and hearing further argument, and that the Director be permitted to intervene and to file a brief in such reopened proceedings (R. I, 57–60). The Commission on October 23, 1942, issued Order No. 2404, which reopened the record "for the purpose of receiving from the Office of Price Administration, on behalf of the Director of Economic Stabilization,

[2] The dissenting Commissioner concluded that the record justified a large rate reduction (R. II, 316–317).

additional evidence relating to the inflationary effect, if any, of the increase in rates authorized by Order No. 2401," and intervention was "granted for such purpose" (R. I, 60–63). This order, from the limitations of which one Commissioner dissented (R. II, 317), fixed November 2, 1942, as the date for the further hearing. On October 30, 1942, the Company finally consented to intervention by the Director (R. I, 191).

A further petition was thereafter filed on behalf of the Director on October 31, 1942, which alleged, *inter alia*, that Order No. 2404 unnecessarily restricted the Director's right of intervention and improperly limited the type of evidence which the Commission would receive. It further pointed out that in Order No. 2404 the Commission failed either to grant or to deny the prayer of the earlier petition to vacate Order No. 2401 (R. I, 63–65). This petition was denied by an oral ruling of the Commission on November 2, 1942 (R. I, 214–215). One Commissioner dissented from this ruling in a comprehensive opinion (R. II, 322–336).

Hearings were held on November 2 and 4, 1942, devoted chiefly to an effort to secure the withdrawal of the limitations imposed by Order No. 2404. On November 9, 1942, the Commission issued Order No. 2418 denying the petition that Order No. 2401 be vacated, one Commissioner renewing his dissent. (R. I, 66–67.) Petitions for reconsideration were filed on November 12, 1942,

on behalf of the Director and the Administrator, setting forth in detail errors in the Commission's procedural rulings and in its determination of just and reasonable rates (R. II, 336–338, 346–353). Both petitions were denied on November 16, 1942, by Commission Orders Nos. 2422 and 2423, one Commissioner dissenting (R. II, 338–339, 353).

On appeal by the Director and Administrator the district court held that the action of the Commission was "arbitrary and illegal" and that the Commission's Order No. 2401 should be vacated (R. I, 15–21). The court ruled that the "right conferred upon the President and his representatives was not a mere formality" (R. I, 19), and that "the basic principles of the [sliding-scale] arrangement and other factors which inhere in the question of inflation and of fairness and justice are open for determination" (R. I, 20).

The company and the Commission appealed to the court of appeals. The case was there reargued, because of the resignation of Mr. Justice Vinson. The Court of Appeals, with one Justice dissenting, upheld the action of the Commission, reversed the judgment of the district court and remanded the case with directions to dismiss the appeals from the Commission's order.

REASONS FOR GRANTING THE WRIT

1. While the order of the District of Columbia Public Utilities Commission, from which this litigation arises, imposes a rate increase of no

more than $200,000 upon the users of gas in the District of Columbia, the legal issues posed by the case are of grave importance to the national stabilization program. Fundamentally, they raise the question whether a regulatory authority having jurisdiction over common carrier or other public utility rates is free to approve an increase in any such rate whenever the increase could be found just and reasonable if measured by peacetime criteria, or whether, instead, the regulatory authority is under a legal duty—imposed by its own statute and by the Act of October 2, 1942, *supra*, p. 4, as well—to deny every rate increase as inflationary and therefore as unjust and unreasonable in the absence of a clear showing that the increase is necessary.

The Administrator's duties under the Act of October 2, 1942, call for his appearance in numerous rate increase proceedings before Federal, state and local regulatory agencies throughout the nation. He must also make administrative determinations whether to oppose or to acquiesce in a great volume of proposed rate increases of which he receives notice under the Act of October 2.[3] Both petitioner and the regulatory agen-

[3] Over 7,500 notices of proposed rate increases (chiefly from carriers) have been received under the Act of October 2. Procedural Regulation No. 11, issued by petitioner, prescribes the form of notices and requires that they be accompanied by data needed in deciding whether to oppose the increase. 7 Fed. Reg. 939. It is estimated that the total annual

cies which pass upon rate increases need the guidance of an authoritative statement on the issues raised by this case.[4]

2. The Commission failed to accord petitioners the full and fair hearing to which the Act of October 2 entitled them. Both courts below agreed that the Act of October 2 assured the President's representative a full and fair hearing. Yet the illusory character which this privilege will have if the court of appeals' decision goes unreviewed is revealed by the following actions of the Commission which the majority of that court deemed compatible with a full and fair hearing:

(a) The Commission ruled that the scope of the hearing was restricted by the antecedent sliding-scale arrangement which provided for automatic escalation of the rates if their yield were shown to have fallen below a specified level.

(b) The Commission refused to reconsider the rate of return provisions in the sliding-scale arrangement, and therefore could not determine what rate of return was adequate in view of the stabilization program (R. I, 121–123; II, 345–353, 409).

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payments for gas, electric, telephone, street and steam railway and other utility and common carrier services exceeds 13 billion dollars.

[4] The administrative uncertainty left by the decision is heightened by the fact that the lower tribunals have been in sharp disagreement; the Commission decided two to one against petitioners, the district court sustained petitioners, and the court of appeals decided two to one against them.

(c) The Commission refused to consider the propriety, in determining depreciation expense, of its calculation of interest at only 4 percent on the depreciation reserve, whereas the basic rate of return allowed under the arrangement is 6½ percent and the actual rate of return is at least 5 percent.[5] Cross-examination on this question of depreciation expense was not permitted (R. II, 390–396). Yet the Commission's action appears to disregard the reasoning in this Court's opinion in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 595–596. See also paragraph 16 of section 8 of the Act of March 4, 1913, *infra*, p. 27, and R. II, 315–316.

(d) The Commission rejected petitioners' request, directed to show that no hardship was being imposed on the Company, that the Commission consider data (already in the Commission's records) which indicated that the rate base was in excess of the original investment (R. I, 207). Like the other efforts of petitioner in the proceedings, this would not have involved a protracted rate hearing; no full-scale valuation hearing was suggested or contemplated.

(e) The Commission's order of October 13 increasing the rates *as of September 1, 1942* (R. I, 54), was issued before the Company gave petitioner the statutory 30 days' notice. After refusing to vacate this order, the Commission au-

[5] See note 10, page 20, *infra*.

thorized petitioner to appear only for the purpose of showing the "inflationary effect, if any," of the increase, an authorization which, in view of the Commission's persistent refusal to consider the relevant factors going to the necessity and reasonableness of the increase, was meaningless (Cf. R. II, 333–335, 444).

3. The freedom which normally is accorded a regulatory authority "to make the pragmatic arrangements called for by particular circumstances," which was invoked by the Court of Appeals, could not relieve the Commission from the duty of according petitioner a full and fair hearing, whether the source of that duty lay in Constitution or statute. Cf. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 586. The rights of which petitioner was deprived were substantial, and absolution for the Commission's errors cannot be found in an exercise of administrative discretion. Cf. *Atchison, T & S. F. R.* v. *United States*, 284 U. S. 248.

Under its own statute the Commission is required to prescribe just and reasonable rates (Appendix, *infra*, p. 24). Changes in economic conditions contract, as well as expand, the range of administrative discretion under an authority to establish just and reasonable rates. We maintain that in a wartime economy where there is constant, pervasive pressure on prices, wages, and rates to rise, effective stabilization is possible only if *all* increases are denied to the beneficiaries of stabili-

zation which they do not clearly show to be necessary. If that position is sound, then we submit that no unnecessary increase in rates can, as a matter of law, be held just and reasonable.[6]

The Commission's duty in this regard was reenforced by the Act of October 2. The notice-and-intervention procedure was established by Congress as part of a comprehensive stabilization program in which the Commission and other regulatory agencies were entrusted with the stabilization of common carrier and other public utility rates. Concededly the petitioners were entitled to intervene and to appeal by virtue of this Act (see 88 Cong. Rec. 7973–74; R. II, 435). But it was not the intention of the lawmakers that these privileges be mere formalities. While, to be sure, Congress declined to approve a provision which the Senate had passed giving the President a veto power over all rate increases, "It was certainly not the intention of the lawmakers to leave these regulatory bodies, or the utilities, free of concern for

[6] It has not been practicable in this petition to elaborate the criteria of necessity. However, we have found no broad formulation of these criteria more satisfactory than that contained in Section 1 of the October Act itself, namely, "necessary to aid in the effective prosecution of the war or to correct gross inequities." Applied with a view to the needs of the industry and to constitutional limitations, these standards give apt direction to administrative judgment while imposing a salutary restraint upon its exercise.

the wartime welfare of the Country, to do business 'as usual' . . ." (R. II, 448).[7]

Preoccupation with an antecedent formula cannot form the measure of the Commission's duties. This Court has had occasion recently to observe, "Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another, and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis upon its immediate task." *Southern S. S. Co.* v. *National Labor Relations Board,* 316 U. S. 31, 47. The fact that the District of Columbia statutes in their standard of reasonableness follow

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[7] This position is not affected by Section 302 (c) (2) in the Emergency Price Control Act of 1942, which states that "Nothing in this Act shall be construed to authorize the regulation of * * ** rates charged by any common carrier or other public utility." It has been argued that the failure to give the President power, under the Act of October 2, to suspend that immunizing provision and the preservation, by Section 7 (c) of the October Act, of the unsuspended provisions of the original Act shows clearly a congressional intent not to subject utility rates to regulation under the Price Control Act. This must be granted. But the Price Administrator, as intervenor under the October Act, does not purport to regulate utility rates. If, as we contend, a substantive duty is imposed on regulatory authorities by the October Act, it is a duty imposed by that Act and not by the Price Control Act or by the Price Administrator. A power to suspend Section 302 (c) (2) of the Price Control Act would have been of no use whatsoever to the President acting in accordance with the intervention procedure.

a familiar pattern of Federal and state legislation assures that the decision of this Court will not be localized in effect. Cf. *American Medical Ass'n* v. *United States*, 317 U. S. 519.

4. To the extent that the Commission sought to reconcile its action with the dictates of the stabilization legislation, the considerations advanced are inadequate and in themselves raise questions of importance.

The Commission reasoned that the increase was a very little one and hence would have no "material inflationary tendencies" (R. I, 54). The disastrous effects of this notion on stabilization, if allowed to become prevalent among regulatory authorities, were vividly stated by Chief Judge Vinson of the Emergency Court of Appeals in *Lincoln Savings Bank* v. *Brown*, decided May 7, 1943:

> It is true that an increase in complainant's prices, in and of itself, does not substantially affect living costs. Complainant's statement is correct, so far as it goes, but it is deceptive in its intended inference that, for that reason, no purpose is served by the regulation of safe deposit rental rates. Accession to this type of reasoning would virtually destroy the effectiveness of the Act. Complainant's argument is applicable to thousands of commodities besides its own. Clearly, however, the collective effect of so many increased prices could create the very chaotic condition that

> the Act was designed to prevent. It is plain to us that there is compelling reason to restrain the complainant and others in its class from making their individually inappreciable contributions to what would result in a very appreciable total.

The Commission did not allow the company to treat excess profits taxes and corporate income taxes above 31 percent as operating expenses (R. I, 48). This action, of course, we approve; but we believe that the Commission was under a duty to disallow all income taxes above those levied at peacetime rates.[8] This question is of lively importance today. The allowance of the additional extraordinary defense and wartime income taxes as operating expenses, to be borne by the rate payers, threatens a dangerous inflationary spiral. The case of *Galveston Electric Co.* v. *Galveston,* 258 U. S. 388, has left regulatory bodies uncertain as to the scope of their powers where wartime taxes are involved, at least when confiscation is not an issue. In any event, the Commission's action in disallowing excess profits taxes served only to reduce the size of the unnecessary rate increase which it should have prevented entirely.

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[8] A different treatment of wartime taxes may be justified where appropriate adjustment for wartime conditions is made in the permitted rate of return. There would of course be no justification for an increase here since the company was earning at least 5 percent after all income and excess profits taxes.

The Commission asserts that adherence to the sliding-scale arrangement, with the consequent rate increase, was necessary to maintain the Company's credit position and to enable it to secure funds for necessary additional facilities. There exists no simpler way to relax the restrictions of stabilization than by finding that price increases are needed to increase production—or, to use the present variant, that rate increases are needed to maintain credit and enlarge facilities. The danger lies in the fact that, although the principle is valid, evidence of convenience and expediency is easily substituted for proof of compliance with the rigorous standard of necessity. The hazard is exemplified by the Commission's action in the present case.

Seemingly, the Commission was moved to its assertion by two facts: the temporary failure of the Company to dispose of all of an issue of preferred stock and the temporary recession in the Company's net revenues after all taxes. But the Commission itself ascribed the failure of the stock issue to "depressed market conditions" (R. I, 50–51) and, since it occurred several months before the rate proceedings, when the market was near its post-Pearl Harbor nadir, fear for the "integrity" of the sliding-scale arrangement (R. I, 51) could not have caused the Company's short-lived set-back.[9] Had the Commission under-

[9] The balance of the issue was sold *after* the decree of the district court setting aside the order. The Company also sold $1,700,000 3¾% bonds last winter and spring.

taken to determine whether a rate increase was necessary to permit needed financing, surely it would have sought evidence as to financial market prospects generally, as to the effect, if any, of a denial of the rate increase on the Company's prospects as the market became more normal, and whether an offering on more favorable terms was indicated. But at the hearings the Commission merely introduced the record of its security issue proceedings some months earlier, while the Company offered no evidence whatsoever, contenting itself with the mention of its financial needs by counsel in argument. Thus, far from obtaining proof of necessity, the Commission majority simply concluded that it would be advisable to cast the burden of a rate increase on the rate payers on the chance that the increase would be helpful to the financing prospects of a company which enjoyed an extraordinary record of prosperity (R. II, 421–422).

The evidence as to declining revenues fell equally far short of proof of necessity. Despite an abnormally mild winter in 1941–1942 (R. II, 384), the Company's gross revenue for the first seven months of 1942 greatly exceeded its gross revenue for the prior year (R. II, 383). This led to an increase in net revenues *before* income and excess profits taxes. However, the increased taxes caused a slight decline in net *after* taxes (Tr. 821–822). Clearly this provided no occasion for

concern to a company which, on its own figures, was earning five percent after taxes [10] on a substantially undepreciated rate base. This rate of return in fact was an understatement in view of the Commission's undue liberality in the treatment of depreciation expense and wartime taxes, noted above. Moreover, the Company had enjoyed an unusually prosperous history; and it had every prospect for increased wartime earnings.[11]

Shortly before the war this Court held that no substantial Federal question was presented by a refusal to increase gas company rates which were yielding five percent. *Peoples Gas Light & Coke Co.* v. *Hart*, 309 U. S. 634 (1940). See also Mr. Justice Stone, dissenting, in *West* v. *Chesapeake & Pot. Tel. Co.*, 295 U. S., at 682. "A return which was adequate then may not reasonably be increased now, if full effect is to be given to

[10] On the basis of the original data, the Company's return after all federal income and excess-profits taxes (computed under the then pending Revenue Act of 1942) was 4.87% for the year ended June 30, 1942. At the final hearing (R. I, 222 *et seq.*) it appeared the Company would save at least $36,000 on an annual basis as a result of the final provisions of the Act as enacted by Congress. This increased the Company's return to 5% for the same period, .13 percent of the rate base ($28,088,332) (R. II, 420) being approximately $35,000.

[11] These were realized. The Company's net income has mounted steadily since the fall of 1942. It paid an excess-profits tax in that year contrary to the Commission's assumption (R. I, 49).

the stabilization program and wartime economic exigencies.

CONCLUSION

For the reasons stated it is respectfully submitted that this petition for a writ of certiorari should be granted; and, if granted, it is requested that the case be advanced and assigned for argument at an early date.

CHARLES FAHY,
Solicitor General.

GEORGE J. BURKE,
General Counsel,
Office of Price Administration.

September 1943.

APPENDIX

The Emergency Price Control Act of 1942, 56 Stat. 23:

Sec. 1 (a) (50 U. S. C. App., Supp. II, § 901 (a)):

It is hereby declared to be in the interest of the national defense and security and necessary to the effective prosecution of the present war, and the purposes of this Act are, to stabilize prices and to prevent speculative, unwarranted, and abnormal increases in prices and rents; to eliminate and prevent profiteering, hoarding, manipulation, speculation, and other disruptive practices resulting from abnormal market conditions or scarcities caused by or contributing to the national emergency; to assure that defense appropriations are not dissipated by excessive prices; to protect persons with relatively fixed and limited incomes, consumers, wage earners, investors, and persons dependent on life insurance, annuities, and pensions, from undue impairment of their standard of living; to prevent hardships to persons engaged in business, to schools, universities, and other institutions, and to the Federal, State, and local governments, which would result from abnormal increases in prices; to assist in securing adequate production of commodities and facilities; to prevent a post emergency collapse of values; to stabilize agricultural prices in the manner provided in section 3; and to permit voluntary cooperation be-

tween the Government and producers, processors, and others to accomplish the aforesaid purposes. * * *

SEC. 302 (c) (50 U. S. C. App., Supp. II, § 942 (c)):

* * * *Provided*, That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility * * *.

Act of October 2, 1942, c. 578, 56 Stat. 765:

SEC. 2. The President may, from time to time, promulgate such regulations as may be necessary and proper to carry out any of the provisions of this Act; and may exercise any power or authority conferred upon him by this Act through such department, agency, or officer as he shall direct. The President may suspend the provisions of sections 3 (a) and 3 (c), and clause (1) of section 302 (c), of the Emergency Price Control Act of 1942 to the extent that such sections are inconsistent with the provisions of this Act, but he may not under the authority of this Act suspend any other law or part thereof.

* * * * * *

SEC. 7. * * *

* * * * * *

(c) Nothing in this Act shall be construed to invalidate any provision of the Emergency Price Control Act of 1942 (except to the extent that such provisions are suspended under authority of section (2), or to invalidate any regulation, price schedule, or order issued or effective under this Act.

District of Columbia Code (1940 Ed.):

SECTION 43–317:

Nothing in chapters 1–10 of this title shall be taken to prohibit a public utility, with the consent of the commission, from providing a sliding scale of rates and dividends according to what is commonly known as the Boston sliding scale, or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purposes of chapters 1–10 of this title. Such arrangement shall be under the supervision and regulation of the commission. The commission shall ascertain, determine, and order such rates, charges, and regulations, and the duration thereof, as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges, and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to alter or amend all orders relative thereto, is reserved and vested in the commission notwithstanding any such arrangement and mutual agreement. (Mar. 4, 1913, 37 Stat. 980, ch. 150, § 8, par. 18.)

SECTION 43–705:

The District Court of the United States for the District of Columbia shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a pub-

lic utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the Clerk of the District Court of the United States for the District of Columbia a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered thereon: * * * Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any justice or justices thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearing of any such appeal, the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action, and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Any party, including said Commission, may appeal from the order or decree of said court to the United States Court of Appeals for the District of Columbia, which shall thereupon have and take jurisdiction in every such appeal. Thereafter the Supreme Court of the United States may, upon a petition for certiorari granted in its discretion, review the said case.

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(Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2.)

Act of March 4, 1913, 37 Stat. 974, (creating the Public Utilities Commission of the District of Columbia):

SEC. 8. * * *

PAR. 2. That every public utility doing business within the District of Columbia is required to furnish service and facilities reasonably safe and adequate and in all respects just and reasonable. The charge made by any such public utility for any facility or services furnished or rendered, or to be furnished or rendered, shall be reasonable, just, and nondiscriminatory. Every unjust or unreasonable or discriminatory charge for such facility or service is pro-

hibited and is hereby declared unlawful. Every public utility is hereby required to obey the lawful orders of the commission created by this section.

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PAR. 16. * * * The commission shall ascertain and determine what are the proper and adequate rates of depreciation of the several classes of property of each public utility. These rates shall be such as will provide the amounts required over and above the expense of maintenance to keep such property in a state of efficiency corresponding to the progress of the industry. Each public utility shall conform its depreciation accounts to such rates so ascertained and determined by the commission. The commission may make changes in such rates of depreciation from time to time as it may find to be necessary. The commission shall also prescribe rules, regulations, and forms of accounts regarding such depreciation which the public utility is required to carry into effect. The commission shall provide for such depreciation in fixing the rates, tolls, and charges to be paid by the public. * * *

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PAR. 88. That whenever, after hearing and investigation as provided in this section, the commission shall find that any rate, toll, charge, regulation, or practice of any public utility within the District of Columbia is unreasonable or discriminatory, it shall have the power to regulate, fix, and determine the same as provided in this section.

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PAR. 90. That the commission shall inquire into any neglect or violation of the

laws or regulations in force in the District of Columbia by any public utility doing business therein, or by the officers, agents, or employees thereof, or by any person operating the plant of any public utility, and shall have the power, and it shall be its duty, to enforce the provisions of this section as well as all other laws relating to public utilities.

Executive Order No. 9250 (7 Fed. Reg. 7871):

By virtue of the authority vested in me by the Constitution and the Statutes, and particularly by the Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to aid in Preventing Inflation, and for Other Purposes", as President of the United States and Commander in Chief of the Army and Navy, and in order to control so far as possible the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war, it is hereby ordered as follows:

Title I—Establishment of an office of economic stabilization:

* * * * *

4. The guiding policy of the Director and of all departments and agencies of the Government shall be to stabilize the cost of living in accordance with the Act of October 2, 1942; and it shall be the duty and responsibility of the Director and of all departments and agencies of the Government to cooperate in the execution of such administrative programs and in the development of such legislative programs as may

be necessary to that end. The administration of activities related to the national economic policy shall remain with the departments and agencies now responsible for such activities, but such administration shall conform to the directives on policy issued by the Director.

* * * * * *

Id., Title VI—General Provisions:

4. The Director shall be the agency to receive notice of any increase in the rates or charges of common carriers or other public utilities as provided in the aforesaid Act of October 2, 1942.

Executive Order No. 9328, par. 4 (8 Fed. Reg. 4681, 4682):

The attention of all agencies of the Federal Government, and of all State and municipal authorities, concerned with the rates of common carriers or other public utilities, is directed to the stabilization program of which this order is a part so that rate increases will be disapproved and rate reductions effected, consistently with the Act of October 2, 1942, and other applicable federal, state or municipal law, in order to keep down the cost of living and effectuate the purposes of the stabilization program.

U. S. GOVERNMENT PRINTING OFFICE: 1943